

This letter discusses issues regarding Gas Revenue Tax and Electricity Excise Tax. See 86 Ill. Adm. Code 470.101. (This is a GIL).

July 26, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated May 26, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

After calling the Springfield office for assistance concerning Form RPU-3, I was instructed to send my specific questions directly to you. Please review the following information and respond at your earliest convenience.

Background Information

COMPANY is a STATE-based company. We anticipate selling natural gas and electricity via interstate commerce to end-users located in Illinois. We will complete all administrative functions, including the execution of contracts and the acceptance of purchase orders, from our Wisconsin office.

Thank you in advance for your assistance.

Questions

1. In 1995, we received a General Information Letter (copy attached) which concluded that given our circumstances, 'no Gas Revenue Tax liability is incurred'. Is this conclusion still applicable? Does the absence of liability relieve us from filing Form RPU-3?

The information set out in the Department's letter to you dated May 23, 1995 remains accurate. If a business has no liability under either the Gas Revenue Tax Act or the Electricity Excise Tax Act, it is not required to register with the Department regarding those taxes and does not need to submit a Form RPU-3, Utility Tax Application for Registration, to the Department.

2. It is our understanding that legislation later in 1995 further exempted purchases of gas and gas services (excluding local distribution by a public utility) from the Gas Revenue Tax for end-users who 'acquired contractual rights for the direct

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purchase of gas or gas services originating from an out-of-state supplier or source on or before March 1, 1995'. Is this legislation still applicable? If an end-user is not exempt under this provision (i.e. not grandfathered) does the exemption discussed in question 1 still apply?

Beginning with charges billed on and after January 1, 1996, any charge for gas or gas services to a customer who acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995, except for those charges solely related to the local distribution of gas by a public utility, is not subject to the tax imposed by the Gas Revenue Tax Act. See the enclosed copy of 86 Ill. Adm. Code 470.171. This exemption from Gas Revenue Tax liability is still applicable for any sales to such qualifying customers. Please note that the concepts discussed in our prior letter to you referenced in question number one will apply regardless of whether the sale is to a qualifying customer described in this question.

3. Based on our reading of Illinois Electricity Deregulation Bill HB362, it is our understanding that the utilities will be considered the 'delivering supplier', and therefore responsible for the collection and remittance of the Electricity Excise Tax? Is this an accurate interpretation? Does this definition relieve us from filing Form RPU-3?

The Electricity Excise Tax Law became effective August 1, 1998. See 35 ILCS 640/1 et seq. This tax is imposed upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of this tax is on the consumers of electricity.

Except for customers that elect to become self-assessing purchasers, the tax is collected from the customers by their delivering suppliers who maintain a place of business in this State. See 35 ILCS 640/2-7. The term "delivering supplier" is defined as "any person engaged in the business of delivering electricity to persons for use or consumption and not for resale and who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the suppliers engaged in delivering the electricity prior to its receipt by the purchaser." 35 ILCS 640/2-3.

Sellers of electricity do not qualify as delivering suppliers under the Electricity Excise Tax Law when other entities deliver the electricity to the sellers' customers in this State. In those situations, the sellers are not required to register as delivering suppliers and are not required to collect Electricity Excise Tax or file returns under the Electricity Excise Tax Law. However, the entities that are delivering the electricity to the sellers' customers in this State are required to register as delivering suppliers, collect Electricity Excise Tax, file returns, and remit the tax to the Illinois Department of Revenue.

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk

Enc.